

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 2170 of 2009(G)

**1. K.VIJAYAKUMAR, S/O.KUMARAN,
... Petitioner**

Vs

**1. STATE INFORMATION COMMISSION, KERALA
... Respondent**

2. SRI.MANOJ V.NAIR, SECRETARY,

For Petitioner :SMT.AYSHA YOUSEFF

**For Respondent :SRI.M.AJAY, SC, STATE INFORMATION
COMMN**

The Hon'ble MR. Justice ANTONY DOMINIC

Dated :22/01/2009

O R D E R
ANTONY DOMINIC, J.

W.P(C).No. 2170 OF 2009

Dated this the 22nd day of January, 2009

JUDGMENT

The prayer in this writ petition is to quash Ext.P14 and to declare that imposition of penalty by Ext.P14 order is illegal.

2. The facts of the case show that, the petitioner is the Secretary of Munnar Grama Panchayat and also the Public Information Officer notified under the Right to Information Act, 2005. It is stated that, the 2nd respondent made Ext.P1 request, under the provisions of the said Act. It is stated that on receipt of Ext.P1, the petitioner gave Ext.P2 reply requiring the 2nd respondent to submit the application in the letter pad of the organization of which he is the Secretary and also with the seal affixed. It is stated that, Ext.P2 could not be served on the 2nd respondent and was returned by the Peon of the Panchayat Office.

3. Pausing here for a moment, it should be noticed that the petitioner has not been able to show, any provision either in the Act

or any of the Rules framed thereunder requiring that the complainant should make the request in any letter pad or that the same should carry seal as directed in Ext.P2.

4. The averments show that, subsequently, the 2nd respondent came to the office of the petitioner when Ext.P3 letter dated 02.03.07 was given containing instructions similar to what is contained in Ext.P2. Petitioner states that there was no response from the 2nd respondent and that while so, the petitioner received Ext.P4 notice issued on behalf of the 2nd respondent, requiring him to furnish the informations sought for in Ext.P1, within seven days. Thereupon, the petitioner issued Ext.P5 informing that the information can be given, on payment of the fee, without specifying the fee payable, as is required under Section 7(3) of the Act. Here also it should be noticed that the fee payable was not specified in Ext.P5.

5. Petitioner states that there was no response to Ext.P5 either. Subsequently, he received Exts.P6 and P6(a) from the 1st respondent, informing that a complaint has been made by the 2nd respondent, under Section 18 of the Act. According to the petitioner, even after receipt of Ext.P6, he issued Ext.P7 dated 28.04.08, requiring the 2nd respondent to remit fee at the rate of Rs.2/- . Meanwhile, petitioner gave Ext.P8 reply to the 1st respondent, explaining the alleged delay and lapse on his part. Thereafter, in response to Ext.P9, petitioner appeared before the 1st respondent

and gave Ext.P10 reply. Subsequently, Ext.P11 order was passed directing the petitioner to give the information sought for by the 2nd respondent and to issue notice under Section 20(1) of the Act to file an affidavit to show cause why penalty should not be levied on him. It is stated that in pursuance to Ext.P11, he gave the necessary informations and also filed Ext.P13 affidavit, in which he explained the delay that has occurred and contended that he is not liable to be penalised. Thereafter, the 1st respondent passed Ext.P14 order and levied a penalty of Rs.25,000/- on the petitioner and it is challenging this order, the writ petition is filed with the main prayer referred to above.

6. Admittedly, Ext.P1 dated 19.01.07 is the request that was made by the 2nd respondent and the information sought for was given by Ext.P12 only on 20.06.08. The fact that there has been a delay in giving the information sought for, is not a matter of the dispute. Justification offered by the petitioner is that the 2nd respondent did not pay the requisite fee. Under Section 7(3) of the Act, it is the obligation of the Information Officer to specify the necessary fee and intimate the same to a party. In this case, that was done only by Ext.P7 dated 28.04.08. Here, there has been a lapse on the part of the petitioner.

7. Further the stand taken by the petitioner in Ext.P2 requiring the 2nd respondent to make the application in the letter pad of the

organization and to affix seal is also unwarranted in view of the provisions of the said Act.

8. Admittedly, in response to Ext.P1 dated 19.01.07 the information sought for was furnished only by Ext.P12 dated 20.06.2008. On facts, the petition has not been able to satisfy me that there was any reasonable explanation for the delay. If that is the position, the delay caused in furnishing the information, the petitioner has rendered himself liable to be penalised.

9. In view of the aforesaid lapse on the part of the petitioner, the decision taken by the 1st respondent to penalise him cannot therefore be said to be illegal or perverse for any reason.

I am not in a position to interfere with the order of 1st respondent. Writ Petition fails and it is dismissed.

(ANTONY DOMINIC, JUDGE)

ttb